

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:) Case No: 19-09106-JMC-13
RONALD JEFFERY GARDNER and)
AMBER EUGENE GARDNER,)
Debtors.)

MOTION TO ALLOW LATE FILED CLAIM TO BE TREATED AS TIMELY FILED

CLAIM NO. 25

Complete Real Estate Solutions, LLC (“Landlord”), by and through its undersigned counsel, hereby files this motion to allow a late filed claim to be treated as timely filed because the claim arises from rejection of an executory contract. Pursuant to Fed. R. Bankr. P. 3002(c)(4), the Court may set a set a separate deadline and accept late filed claims of that nature. In support of this Application, Landlord respectfully states as follows.

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.
2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
3. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
4. The statutory predicates for the relief sought in this Motion are sections 105, 365, 503, and 507 of the Bankruptcy Code.

BACKGROUND

A. The Lease, Default and Eviction Filing

5. Landlord leased real property located at 1919 Hiker Trace, Columbus IN 46142 (the “Leased Premises”) to debtors RONALD JEFFERY GARDNER and AMBER EUGENE GARDNER (the “Debtors”) as their residence under the terms of a lease commencing October 19, 2018, and ending April 30, 2020 (the “Lease”). A true and correct copy of the Lease is annexed to the Proof of Claim and incorporated herein.
6. Pursuant to the terms of the Lease, the Debtors agreed to make monthly rent payments of \$995 to the Landlord by the first day of each month (the “Rent”).
7. Debtor defaulted on the Lease by failing to pay the rent due. The last payment received by Landlord from Debtor was for November 2019.
8. Landlord filed a Motion for Relief from Stay in these proceedings in order to recover possession of the real property at issue. (ECF #13) The Motion was granted by the Court on February 21, 2020, (ECF #19) one day after the initial claims deadline of February 20, 2020.
9. The Court has not previously set a deadline for submission of a claim on executory contracts or unexpired leases.
10. Concurrent with the filing of this Motion, Landlord has submitted a claim for \$6,661.51. Pursuant to the limitations in 11 U.S.C. § 502(b)(6), the damages sought include unpaid rent through the April 30, 2020, termination date of the Lease.

BASIS FOR RELIEF REQUESTED

11. Rule 302(c) of the Rules of Bankruptcy Procedure generally sets deadlines for submission of claims in bankruptcy, subject to six exceptions. Relevant here, one of the exceptions to the general claims deadline is that “[a] claim arising from the rejection of an executory contract or unexpired lease of the debtor may be filed within such time as the court may direct.” Fed. R. Bankr. P. Rule 3002(c)(4).
12. The Seventh Circuit has held that this Rule creates an exception to the general bar against late-filed claims in Bankruptcy. *See Matter of Greenig*, 152 F. 3d 631, 634 (7th Cir. 1998) (noting 5 exceptions to general claims deadline).
13. The general deadline for submission of claims in this case was February 20, 2020—one day prior to the date on which the Court granted Landlord’s Motion for Relief from Stay. Consequently, Landlord could not ascertain the value of its claim, including whether damages would be mitigated by re-rental prior to lease expiration, until after the initial claims deadline.
14. Wherefore Landlord requests that its motion be granted and its claim be accepted as timely filed.

Respectfully submitted,

MCANLIS LAW GROUP PC

By: /s/ John R. Hurley
John R. Hurley #34437-49
Attorney for Creditor

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the counsel of record and the parties listed below electronically on this day May 20, 2020:

Thomas Donald Bushhorn
bushhornlaw@att.net

U.S. Trustee
ustpregion10.in.ecf@usdoj.gov

Ann M. DeLaney
ECFdelaney@trustee13.com

/s/ John R. Hurley
John R. Hurley
Attorney for Creditor
MCANLIS LAW GROUP PC
711 E. 65th Street
Indianapolis, IN 46220
Tel: (317) 524-0216 (Office)
Fax: (866) 612-2682